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SPEECH



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MR. BALDWIN, OF CONNECTICUT,

IN THE SENATE OF THE UNITED STATES, THURSDAY, JULY 25, 1850,

*On the claim of Texas to New Mexico.*

Mr. BALDWIN said:

Mr. PRESIDENT: I am in favor of the amendment of the Senator from Missouri. I think that if the amendment proposed by the Senator from Maine for the appointment of commissioners to agree with commissioners from Texas upon a line of boundary between the territory of the United States and Texas is adopted at all, it should be adopted with the restrictions imposed by the amendment offered by the Senator from Missouri. I am opposed to the whole scheme of establishing the limits of the territory of the United States and the territory of Texas by a conventional boundary in the manner proposed by the amendment of the Senator from Maine, because I believe it to be a question that ought to be settled by that high tribunal established by the Constitution, with ample powers for the adjustment by judicial adjudication of all controversies in which the United States and the States of this Union are concerned. I believe that the proper mode of settling this controversy, is, that which was recommended by the late President of the United States, of referring it to the decision of the Supreme Court of the United States, which has already acted upon similar questions between different States of this Union, and in a manner satisfactory to them all. It has been said by the Senator from Texas that this tribunal is an unfair one, because it is a tribunal constituted by the Government of the United States, and the controversy will be between the Government of the United States and the State of Texas. But, sir, is there anything more unfair in the exercise of judicial power by the Supreme Court of the United States, in the settlement of a controversy between the Government and a State, than there is in the exercise of the same power in the settlement of a controversy between the Government and an individual? All controversies between the United States and individuals are settled before the courts of the United States. It is to be equally presumed, in the one case as in the other, that they will be settled fairly and impartially by that high tribunal whose independent position and tenure of office protect it from all suspicion of partiality; and there is no reasonable, no well-founded objection to that tribunal being appealed to, to adjust and settle a controversy of this character between the Government of the United States and one of the States of this Union. The objection that the parties are unequal, would have much more force when the controversy is one between the Government and an individual, since the parties in that case are still more unequal.

But, sir, it has been said to be beneath the dignity of a sovereign State of this Union to submit a controversy relating to her boundary to any ju-

dicial tribunal. I do not know why it should be regarded as beneath the dignity of Texas, when Massachusetts and Rhode Island, and New Jersey, and other States, which formed the original elements of this Union—when States which united in the establishment of the Government under which we live—have not deemed it beneath their dignity. Why is it, sir, that we are told at this late period, by the youngest sister in the Confederacy, that it is beneath her dignity to appear before a tribunal to which the other States have appealed with confidence for the settlement of their controversies?

Mr. RUSK, (interposing.) The honorable Senator is mistaken in what he has said about there being an idea that it would derogate from the dignity of the State of Texas to appear before the Supreme Court.

Mr. BALDWIN. I am not certain that the honorable Senator himself has urged such an objection; but I am quite sure that the idea has been suggested by some gentleman who has spoken on the subject here.

Mr. RUSK. If the honorable Senator will allow me, I will explain what I did say. It was this: that the Supreme Court of the United States had not jurisdiction of this case, by consequence of the special agreement between Texas and the United States contained in the joint resolutions of annexation. By these resolutions a special tribunal was selected. There was an agreement that the right to settle this matter of boundary should be submitted to the treaty-making power.

Mr. BALDWIN. The honorable Senator from Texas now waives all other objection, if I understand him, to the jurisdiction of the Supreme Court of the United States for the settlement of this controversy, but insists that a different mode of adjustment was agreed upon in the joint resolutions of annexation tendered to and accepted by Texas. But what was the object of that provision in the joint resolutions? Texas had been negotiating with the United States for her admission into the Union. A treaty had been formed. That treaty had been rejected by the Senate. Resolutions were then proposed for the admission of Texas into the Union with her *rightful* and *proper* boundaries, providing that "the territory properly included within and *rightfully belonging* to the republic of Texas might be erected into a new State, with a republican form of government, to be adopted by the people of said republic, by deputies assembled in convention, with the consent of the existing government, subject to the adjustment by the Government of the United States of all questions of boundary that might arise with other governments." That

provision had no relation whatever to any controversy that might arise between the United States and Texas in relation to the rightful boundary of Texas. If the treaty-making power failed to settle the boundary question by a peaceful negotiation, such as was then anticipated with the Republic of Mexico, and war intervened, by which a large acquisition of territory was gained by the United States, far exceeding any limits that had been claimed by Texas, how can it be said that that provision in the joint resolutions—which was introduced merely to avoid any ground of complaint on the part of Texas, if the United States, in adjusting the boundary with Mexico, should relinquish a portion of her claim—precludes the United States, now that a much larger territory has been acquired by cession from Mexico, from appealing to the proper judicial tribunals for a decision of her rights?

Mr. President, what is it that we are now proposing to do? To appoint commissioners, not for the purpose of ascertaining and establishing the true boundary line between Texas and the territory of the United States, but commissioners who are to be invested, according to the original proposition, with power of agreeing with commissioners to be appointed by the State of Texas upon a conventional line, regardless of the true boundary heretofore existing, and of agreeing upon the establishment of that conventional line upon such terms and considerations as they shall be able to settle between themselves in regard to it.

Now, sir, I am utterly opposed to any such power being conferred upon commissioners, or exercised by this Government in any form whatever. If Texas is the rightful owner of this territory, let Texas have it. I do not wish to purchase it from her with a view of converting it either into free States or slave States. If it belongs to Texas, I deny, sir, that there is any power conferred by the Constitution to purchase this territory for any such purpose as has been indicated during the present discussion. Senators who have advocated that provision in the bill which is intended to be carried out by this amendment have declared, that in their opinion, the purchase of any portion of the territory claimed by Texas would be a recognition of her title. That was claimed by the honorable Senator from Alabama, now in the chair, [Mr. KING.] It was claimed by the honorable Senator from Georgia, [Mr. BERRIEN,] who has addressed the Senate upon this subject. The contemplated purchase, then, is not to be made, in this view of it, for the purpose of removing an incumbrance—an embarrassment—from the title of the United States, but it is to be made under the idea that we are purchasing from Texas that which she now owns, and of which, by the very act of purchase, we are said to recognize her ownership—purchasing it for the purpose of remitting it into the territorial condition, in order that it may be erected into a State hereafter. Where is the provision in the Constitution for the purchase of territory from a State for any such purpose as this? What would be thought of proposing to the State of Virginia to sell for a pecuniary consideration a portion of her domain, with the people inhabiting it, to the United States, to be erected afterwards into a State?—whether a slave State or a free State, is entirely immaterial as regards this point. If we are to purchase this territory from Texas under such circumstances as to recognize thereby her title, can it be distinguished in any particular from a similar purchase from Virginia or any other

State of a portion of her admitted territory? If we proceed upon the idea of establishing the true boundary, we do not thereby recognize the title of Texas to that to which she relinquishes her claim: for we receive the cession merely to remove an incumbrance from the title to territory which we now claim to belong to the United States. In such a case we recognize no right of Texas; but if we purchase it as the territory of Texas, we might as well make a purchase of territory from any other State in the Union, for the purpose of converting it into a new State.

I have listened, Mr. President, very attentively to the arguments of the honorable Senators from Texas in vindication of their claim to jurisdiction over a large portion of the territory claimed by New Mexico; and, sir, they have not, in my judgment, advanced a single step towards the establishment of the title they have claimed on the Upper Rio Grande.

Let us examine for a few moments the grounds of this claim. There is no pretence on the part of the Senators from Texas that any portion of this territory was within the original limits of ancient Texas. Nobody pretends that. There is no pretence that it was within the limits of the State of Coahuila and Texas. No portion of the ancient State of New Mexico was included within the limits of the Mexican State of Texas, or of Coahuila and Texas.

Texas, in the year 1845, being a portion of the Mexican Republic, of which New Mexico was also a province or a Territory, revolted, and, by a successful revolution, rendered herself independent of the Government of Mexico, breaking off forever her connexion with that Republic. What did Texas acquire by her successful revolution? She acquired the sovereign power—the right of self-government for her people within the actual limits of Texas, as she was at the time when she established her independence. She acquired still another right—that of obtaining, by conquest and by treaty, additional territory from Mexico, with whom she continued to be at war after the establishment of her independence. To what extent, then, did Texas carry her conquests after she became herself a sovereign State, and capable of acquisition? What did she add—what has this Government admitted her to have added to her original territories? I propose to examine that question for a moment.

If Texas has acquired any title to New Mexico, it must have been either by conquest or cession from Mexico to Texas, or it must have been by conquest and cession to the United States for the benefit of Texas. And here, sir, I am willing to admit that if the Government of the United States in all its branches, competent to decide this question, went to war with Mexico for the purpose of vindicating the title of Texas, or of the United States in the right of Texas, to this entire territory, and acquired it in that way, the Government of the United States may be estopped by that act from setting up any title in herself, in her own right, to the territory so acquired. Not, sir, that the Executive, or any of the subordinate officers of the United States have the power to implicate this Government by the admission that this acquisition was made for the benefit of Texas, or of any other State whatever. But if the Government of the United States, if the legislative department of this Government—which alone is competent to do so—have declared war for the purpose of vindicating the title of Texas to New Mexico, then it



will present the question of estoppel that has been urged by Senators who have discussed the subject of that title.

What, then, are the facts, sir? When Texas negotiated for admission into this Union, it was well known that she had asserted a claim to jurisdiction up to the sources of the Rio Grande. But did the resolutions of annexation admit that claim? Not at all, sir. Nothing could be more carefully worded to exclude any such pretence than the language of the joint resolutions. It was provided that "the territory properly included within and rightfully belonging to Texas might be erected into a new State." Why "territory properly included within and rightfully belonging to Texas," if it was intended by the United States that Texas should come in with the boundaries which she had thought proper to claim? The language used in the joint resolution shows that although Congress, when they passed it, had notice of the extent of the claims of Texas, they intended to limit her to such boundaries as she had actually acquired and possessed in March, 1845, when the joint resolution was passed. What else was done, sir? Congress, when they proposed the admission of Texas, were not wholly unmindful of the great fundamental principle upon which this Government is based. They were not unmindful that this Government is founded upon, and maintained by, the assent of the people, and that the people cannot, consistently with the theory of our institutions, be constrained to submit to any form of government to which they have not freely assented. When, therefore, Congress in 1845 proposed to Texas to come into the Union, what did they propose? That she should come in with her rightful boundaries, and with a republican form of government to be adopted by the people of that republic. Who were "the people of that republic?" Were the people of New Mexico, comprising a population of 90,000, a portion of the people of Texas at that time? If they were, why sir, was that constitution presented to Congress as a constitution adopted by the people of Texas, when the whole of the people of New Mexico were excluded from any participation in its adoption? I should like to hear an explanation upon that point. How is it that we had presented here, in December, 1845, a document purporting to have been adopted by the people of the republic of Texas in convention, when 90,000 of those who are now claimed to have constituted a portion of that people were never invited to coöperate in its formation? Is this the republicanism of the nineteenth century? Is this the one in which States and people are to be brought into this Union? Is this indeed, the manner in which the Congress of the United States, who passed the joint resolutions of 1845, had a right to suppose they would be treated by Texas? Did they expect to have palmed upon them, under the pretext of a constitution adopted by the people of Texas, a document under which the people of New Mexico were brought into this Union, and with no participation whatsoever in the act by which they were thus transferred from one jurisdiction to another? If that be so, then, sir, we have a people, who have lived under their own laws for centuries before Texas came into existence, brought into this Union, without their assent, as mere appendages to Texas, without any opportunity being afforded them of saying yea or nay to the act by which their allegiance was transferred to a foreign Government.

No, sir; Texas well knew at that time that no

part of New Mexico was rightfully included in her limits; and therefore it was that she did not notify the people of New Mexico to participate in the formation of her constitution preparatory to her admission into the Union. I will not charge it upon the people of Texas, that they intended to dissemble, to conceal from the Congress of the United States, when they brought their constitution here for approval, "with proof of its adoption by the people of that Republic," the fact that the people of New Mexico, the larger portion of the republic, had not coöperated, or been invited to coöperate, in its adoption.

Well, sir, if Texas, when she came into the Union—if when she adopted her constitution in 1845, Texas did not embrace New Mexico, how has she since had the power of adding new acquisitions to her domain? Texas, after she came into this Union, had no power to acquire territory by treaty; nor had she any longer the power of waging war, as an independent State, for its acquisition. The war and the treaty which ensued, were the war and the treaty of the Government of the United States. The blood that was spilt in the acquisition of the territory of New Mexico and California was the blood of the people of the United States. The money which was expended, in pursuance of the stipulations of that treaty, in purchasing the cession of those territories was drawn from the common Treasury. What pretence of right is there, then, if Texas did not own this territory when she accepted the proposal tendered by the joint resolutions, for her present claim? She has done nothing by which she could have acquired it since. That territory, if not owned by her then, could come to her only by treaty or conquest. She could have obtained it herself in neither of these ways, and the United States had no power, if the territory did not belong to Texas, to wage a war of conquest to acquire it for her. But, sir, it has been stated in the course of this discussion by the honorable Senator from Virginia, whom I do not now see in his seat, but who usually sits nearest to me. [Mr. HUNTER,] that it was understood by the Executive of the United States, when Texas was admitted, that her jurisdiction included the territory claimed by her on the Upper as well as on the Lower Rio Grande, and he said that the instructions given by Mr. Buchanan to Mr. Slidell indicated the same opinion. Sir, these instructions indicate the very reverse. Mr. Slidell did claim, and he was authorized by the President of the United States to claim, as the President himself asserted in his message to Congress, that Texas extended to the Lower Rio Grande, comprehending the territory below Paso del Norte, between that river and the Nueces. Upon what did the President ground his claim? He said it was a part of the original Territory of Louisiana, ceded to the United States by France. He spoke of it as a reannexation of that which had been abandoned to Spain by the treaty of 1819. That was the language of Mr. Polk and of the friends of annexation generally. It was a reannexation of Texas. Did he mean to indicate, when he spoke of a reannexation of Texas as of territory which was originally a part of the province of Louisiana, that that province had ever comprehended the capital of New Mexico, or any portion of its territory? Did anybody ever pretend that New Mexico formed a part of the old province of Louisiana? New Mexico which had been settled by the Spaniards long before the discoveries of La Salle, which conferred upon France the title to Louisiana? But,

sir, to the letter of Mr. Buchanan. In that letter, addressed to Mr. Slidell, November 10, 1845, eight months and more after the passing of the resolutions of annexation, he writes thus:

"The Congress of Texas, by the act of December 19, 1835, have declared the Rio del Norte, from its mouth to its source, to be a boundary of that Republic.

"In regard to the right of Texas to the boundary of the Del Norte, from its mouth to the Paso, there cannot, it is apprehended, be any very serious doubt. It would be easy to establish, by the authority of our most eminent statesmen—at a time, too, when the question of the boundary of the province of Louisiana was better understood than it is at present—that, to this extent at least, the Del Norte was its western limit.

"It cannot be denied, however, that the Florida treaty of February 22, 1819, ceded to Spain all that part of ancient Louisiana within the present limits of Texas; and the more important inquiry now is, what is the extent of the territorial rights which Texas has acquired by the sword in a righteous resistance to Mexico?"

Here he is looking to the sword as the only source of power which Texas could rely upon for the extension of her domain. Then, after going on to speak of the battle of San Jacinto, and the establishment of her independence, he says:

"It may, however, be contended, on the part of Mexico, that the Nueces, and not the Rio del Norte, is the true western boundary of Texas. I need not furnish you arguments to controvert this position.

"The case is different in regard to New Mexico. Santa Fé, its capital, was settled by the Spaniards more than two centuries ago; and that province has been ever since in their possession and that of the Republic of Mexico. The Texans never have conquered or taken possession of it, nor have its people ever been represented in any of their legislative assemblies or conventions."

Here, then, Mr. Buchanan proceeds, after asserting the title of Texas to the Lower Rio Grande, to deny in detail every source of power upon which Texas could rely—every argument which could be urged in behalf of Texas, to extend her limits to the Upper Rio Grande. She had never conquered it; she had never taken possession of it; this people had never been represented in any of her legislative assemblies, nor in the convention which formed the constitution under which Texas came into the Union. I think, then, sir, that the honorable Senator from Virginia [Mr. HUNTER] will find nothing in the letter of Mr. Buchanan to Mr. Slidell that countenances, in the slightest degree, the title now set up for dominion over any portion of New Mexico. He excludes it. But what does the President authorize him to propose? He says:

"Should the Mexican authorities prove unwilling to extend our boundary beyond the Del Norte, you are, in that event, instructed to offer to assume the payment of all the just claims of citizens of the United States against Mexico, should she agree that the line shall be established along the boundary defined by the act of Congress of Texas, approved December 19, 1836, to wit: beginning at the mouth of the Rio Grande; thence up to the principal stream of said river to its source; thence due north to the forty-second degree of north latitude."

He offers to pay to Mexico \$6,000,000, by assuming the payment of the claims of the citizens of the United States against Mexico, provided she would cede to the United States that part of New Mexico east of the Rio Grande, which it is now insisted was already within their actual boundaries. Is this in accordance with the usual policy of our Government—a Government which went to war with Mexico to vindicate, as it is said, the title of Texas to the Lower Rio Grande—to offer to pay to Mexico claims estimated to amount to six millions of dollars, for a cession of territory to which our title was equally clear? No, sir; with such a claim of title no such proposition as that could

ever have been made with honor by the Government of the United States. No such proposition ever was made by the United States, under a belief that the territory for which this sum of money was offered was territory to which Texas had already established her title. This whole claim of Texas to the Upper Rio Grande amounts to nothing more than this: Texas, while engaged in war with Mexico for the establishment of her own independence, was naturally desirous of extending her dominion as far as the Rio Grande. She hoped, if she was successful in the conduct of the war, to be able to acquire dominion to that extent by the force of her arms. She was not struggling, so far as her claim to the Upper Rio Grande is concerned, to vindicate her title to any territory that she then owned or had ever possessed; but she was struggling to acquire by the sword, an addition to that domain, the sovereignty over which she had already established by the sword. She had not succeeded in her effort. No army of Texas had penetrated New Mexico. No Texan, as it has been already remarked, had set his foot upon that territory in hostility to the government of New Mexico, except as a prisoner of war. Mr. President, I understand that the claim which was at one time set up in behalf of Texas, growing out of the convention made with Santa Anna when a prisoner, is abandoned. No one who will examine that instrument, and see what it purports to be upon the face of it, and will follow up his inquiries and learn when it was first presented for its consideration, will fail to perceive that not the shadow of an argument can be drawn from it in favor of the extension of the claim of Texas.

Did the Congress of the United States, by any act of theirs, ever recognize or admit the claim of Texas to the Upper Rio Grande? So far from it, Mr. President, Congress, on the 3d of March, 1845, three days after the passage of the joint resolution, passed an act allowing a drawback of duties on foreign merchandise exported to Chihuahua and Santa Fé, in New Mexico—declaring, therefore, upon the face of your statute-book, that Santa Fé was no part of Texas, but was in Mexico. Congress certainly did not then consider this as a part of Texas. The President, in his war message to Congress, did not speak of it as a part of Texas. He had instructed Mr. Buchanan, months after the passage of the joint resolution, to treat with Mexico for the purchase of this territory, and Mr. Buchanan had disclaimed any pretence of title to New Mexico, as I have already shown from his letter.

But it has been said by the Senator from Texas, [Mr. RUSK] that the war was declared to vindicate the title of Texas to the Rio Grande. I do not deny, sir, that by the act of Congress which constituted the declaration of war, the territory between the Nueces and the Rio Grande was regarded as American soil; but it was the Lower Rio Grande only that was treated as a part of Texas. To that extent it was, indeed, conceded by that act (as Mr. Buchanan had before insisted in his letter to Mr. Slidell) that Texas had been successful in vindicating her claim, or in adding to her original domain. Whatever may be my opinion in regard to it—and I certainly entertained a very different opinion at the time—Congress and the Executive did give countenance to the claim of Texas to the Lower Rio Grande. But, sir, no department of this Government ever recognized, anterior to the ratification of the treaty of Guada-



lupé Hidalgo, any title of Texas to the Upper Rio Grande. Then, Mr. President, what have we here? We have the joint resolution of Congress requiring that the people of Texas, who are invited to come into this Union on giving their assent to the conditions it proposes, shall come with a republican constitution adopted by them in convention. We have the great fact that Texas presented her constitution for our approval without consulting New Mexico, or inviting her people to participate in its formation. Here, then, was an abandonment by Texas at that time—an utter abandonment of any pretence of title to New Mexico. Whatever claim she had before made, whether by the declaration on her statute-book, or otherwise, she must be deemed to have abandoned it, when she presented her constitution, adopted by a different people, as the constitution required by the joint resolution, and to be acted upon by this Government.

We have, then, not only the cotemporaneous conduct of Texas, but of the people of New Mexico, also, who were all this time quietly reposing under the protection of their own laws, and had never thought for one moment that any other power than the republic of Mexico had any right of dominion over them, except that which was exercised by their own departmental legislature. We have, then, the most cogent evidence, from the cotemporaneous conduct of the Congress of the United States, of the Executive of the United States, and of all the departments of this Government, as well as of the government of Texas, and of the people of New Mexico, that New Mexico never did, in fact or of right, form any portion of the republic of Texas.

But this is not all, sir. After the war was declared, an army was sent by the United States to conquer New Mexico and California, and General Kearny, who commanded that army, received special instructions in regard to his proceedings from the Secretary of War, by direction of the President. And what were those instructions? They were utterly inconsistent with any claim of Texas to the jurisdiction of New Mexico. General Kearny was directed "to assure the people of those provinces (New Mexico and California) that it was the wish and design of the United States to provide for them a free government, with the least possible delay, similar to that which exists in our Territories; that they will then be called on to exercise the rights of freemen in electing their own representatives to the territorial legislature." General Kearny, in obedience to these instructions, issued his proclamation on entering Santa Fé to the people of New Mexico, assuring them that they should be protected in the enjoyment of their rights and liberties, and at as early a period as possible, should receive from the Government of the United States a territorial form of government, with the privilege of choosing their own local legislature, and of enjoying all the rights and privileges pertaining to the Territories of the United States. How, then, can it be claimed, consistently with the public faith, when New Mexico, immediately upon the issuing of this proclamation, submitted to our arms without the spilling of a drop of blood, as General Kearny informed General Wool—upon what pretence of justice or fairness can it be urged that New Mexico was conquered for Texas, in order that it might be annexed as an appendage to that State? No, sir; the provinces of New Mexico and California were conquered by the Government of the United States in their own behalf, and the people of both were alike promised

the same protection and the same rights that the other territorial governments of the United States enjoyed. But this is not all. After New Mexico had thus submitted to our arms, a treaty was formed and ratified. And what is the language of that treaty?

"ART. 9. The Mexicans who, in the Territories aforesaid, shall not preserve the character of citizens of the Mexican Republic, conformably with what is stipulated in the preceding article, shall be incorporated into the Union of the United States, and be admitted at the proper time (to be judged of by the Congress of the United States) to the enjoyment of all the rights of citizens of the United States, according to the principles of the Constitution, and in the mean time shall be maintained and protected in the free enjoyment of their liberty and property, and secured in the free exercise of their religion, without restriction."

Will it be claimed, Mr. President, that when this treaty was formed with the Republic of Mexico, and when it was ratified by the Senate of the United States, it was our secret determination that the people of New Mexico, whom we found in the enjoyment of the rights of self-government as a free people, were to be deprived of those rights, thus stipulated by the treaty, and turned over to the tender mercies of Texas, to be kept or to be sold as might best suit the purposes of Texas? Is this the stipulation of the treaty? Did the New Mexicans, who had been promised by Kearny the rights of self-government—did the Republic of Mexico, which represented their interests—suppose for a moment that the Government of the United States meditated so gross a violation of the public faith as to receive them into the Union upon this pledge, with a view to turn them over to the State of Texas, between whose inhabitants and the inhabitants of New Mexico a most implacable animosity existed?

"The Mexicans who, in the Territories aforesaid, shall not preserve the character of citizens of the Mexican Republic, shall be incorporated into the Union," &c.

Yes, sir, the people of the Territory of New Mexico were promised at the proper time (to be judged of by Congress) that they should be admitted into the Union of these States. And we have heard, in the course of this discussion, the expression of different opinions in the Senate, as to whether the proper time has arrived or not for their admission, in pursuance of this stipulation. Yet, according to the claim of Texas, they have been members of the Union since the year 1845, when they were solemnly admitted with a constitution adopted for them by the people of Texas without their knowledge or assent. According to this claim, we were so well satisfied with the propriety of admitting them at that time, that we received them willingly, and without inquiry, into the Union; while now we have been discussing, more or less, for months, and questioning the propriety of their admission, on the ground that the inhabitants of New Mexico are not competent to come into the Union as a State, however competent they may have been to administer their own affairs, in their own way, before the treaty.

There is no consistency in this course of proceeding. But the Senator from Texas inquires, were they ceded to the United States as organized communities? Was new Mexico ceded as an organized community? I answer, Yes, unquestionably she was, and with a government *de facto* in full operation; and the Government of the United States so understood it. Congress, after that cession, passed a joint resolution, introduced by one of the Senators from Virginia, [Mr. Mason,] inviting and offering facilities to induce emigration "to the Territories of New Mexico and California." How came those contiguous Ter-

ritories to be known and designated—the one by the name of New Mexico, and the other by the name of California? How came the people there to be described in the action of our own Congress as separate communities? Because they lived under separate systems of laws, administered by officers having jurisdiction over their own Territories; because they were, in fact, separate communities, and were therefore referred to, not as a Territory, but as distinct Territories, by the treaty which ceded them to the United States. Their territorial laws, the rights of the people acquired under their territorial governments, and their territorial officers, remained. They continued to be organized communities. Not only so, sir; but the Administration of this Government which received from Mexico the cession—the Administration of Mr. Polk—treated them as organized communities, and instructed its military officers in California to continue in the exercise of their functions as civil and military governors, by the presumed assent of the people to the continuance of the government *de facto* which had been thus exercised over them during the war. They recognized thereby that they were not then forgetful, as Texas is and has been, of that great right of self-government which lies at the foundation of all our institutions. They did not regard these military governments as continuing by force of any power which the President of the United States could communicate, as he could during the war, but as continuing by the presumed assent of the people—acknowledging that, until the Congress of the United States intervened to give to that people a new government as a Territory, the right of sovereignty, so far as its exercise was necessary for their protection, continued in them, and, until they chose to alter the government which they found existing *de facto*, it should be treated by this Government as remaining by their presumed assent. It would seem to follow that whenever that government should fail to afford reasonable protection to the people—that whenever that assent, thus implied, should be withdrawn, and those communities should manifest a desire to form a different government, in the absence of any action of the Congress of the United States for their protection—the same power which gave vitality to the continuance of the military government would give vitality to the new government, equally founded upon the consent of the governed, and equally subordinate to the jurisdiction of Congress when brought into exercise.

Mr. President, reliance has been placed by the honorable Senator from Texas upon the fact that, after the conclusion of the treaty of Guadalupe Hidalgo, Mr. Marcy, while Secretary of War, gave instructions to the military officer in command of Santa Fe not to interfere with the authorities of Texas in any efforts they might make for the organization of civil government there—for that the Administration had not taken issue with Texas upon that question. But are the instructions of the Secretary of War—are the instructions of the Executive competent, after the acquisition of territory by a treaty, to transfer that territory and the people who occupy it, from the United States to one of the separate States? Who gave that authority? Congress never authorized any cession of this territory to Texas. Congress has passed no act recognizing any authority of Texas over any portion of the territory. It was transferred by the Republic of Mexico to the Government of the United States; it was paid for from the pub-

lic Treasury; the possession was received by the authorities of the United States; and there was but one duty for the Executive to perform. That duty was to protect the people residing upon these Territories in the possession of all their rights, until Congress should decide what should be their future condition.

But it has been said that we received Texas into the Union while a war was pending between Texas and Mexico, and while Texas was endeavoring to assert, by the force of her arms, her title to New Mexico, as declared by her constitution—in other words, when Texas was seeking to conquer New Mexico; and, therefore, the United States, having become involved in this war in consequence of the annexation of Texas, was presumed to have carried it on as the agent of Texas, and paid out the money from the public Treasury for the acquisition of this Territory as the agent of Texas, and for her sole benefit. This has been urged on the presumption that Texas could have conquered New Mexico, if she had not herself been ceded and annexed to the United States; that Texas, in her then condition, could have marched an army eight hundred miles from her capital through the intervening desert and the *Jornada del Muerto*, and waged a war of conquest successfully upon the inhabitants of New Mexico!

Mr. CHASE, (in his seat.) They tried it once.

Mr. BALDWIN. Yes, sir, they had tried it once; and those who made the attempt came up missing to Texas, though New Mexico, I believe, was able to give an account of them. But let us see, for a moment, what was the condition of Texas at this time. Mr. Upshur, then our Secretary of State, in the course of his correspondence with Mr. Murphy, our chargé d'affaires in Texas, under date of August 8, 1843, thus describes it:

“ Pressed by an unrelenting enemy on her borders, her treasury exhausted, and her credit almost destroyed, Texas is in a condition to need the support of other nations, and to obtain it on terms of great hardship and many sacrifices to herself. If she should receive no countenance and support from the United States, it is not an extravagant supposition that England may and will reduce her to all the dependence of a colony,” &c.

Mr. RUSK. If any agent of Texas represented that, he has done just what has been done a thousand times—slandered her.

Mr. BALDWIN. Mr. Murphy, in his reply to Mr. Upshur, under date of September 24, 1843, writing from Texas, says:

“ If the United States preserves and secures to Texas the possession of her constitution and present form of government, then have we gained all that we can desire, and also all that Texas asks or wishes.”

This, to be sure, is the language, not of a Texan, but of the chargé of the United States, then residing at Galveston. But it shows what, in the judgment of competent observers in and out of Texas, and concerned in the measure of annexation, was the then actual condition of Texas.

Mr. HOUSTON. Mr. President, if the gentleman will allow me to make an explanation, I think I can satisfy him. I can assure the gentleman that at the very time this correspondence took place, Texas had the recognition of her independence guaranteed to her by England against Mexico. England and France both guaranteed to defend her against the consequences. This was at the very time she was recognized, and had been for three months previous to the time when this correspondence between Mr. Upshur and Mr. Murphy took place.

Mr. BALDWIN. It is enough for my present



purpose that in 1836 Texas had set up her claim to include within her own limits the greater part of the population of New Mexico; that the war continued from 1836 down to the year 1845, when Texas acceded to the proposals for her union with the United States; and that in all that period Texas had not succeeded in taking one single step towards establishing her claim or pretence to a title in New Mexico.

Mr. HOUSTON. If the Senator will allow me to make a short explanation, I think I can satisfy him. In the year 1842 Texas carried her arms over the Rio Grande and took Guerrero and other places, and returned. From that time until the annexation, the enemy never crossed the Rio Grande with any hostile force—never.

Mr. BALDWIN. Am I to understand the honorable Senator from Texas to say that Texas ever sent a hostile army into the limits of New Mexico?

Mr. HOUSTON. They sent it across the Rio Grande, where it suited their operations.

Mr. BALDWIN. Was it into the limits of New Mexico.

Mr. HOUSTON. No, sir; it was in the limits of Texas, as contended for.

Mr. BALDWIN. Was it in the ancient limits of Tamaulipas or of New Mexico?

Mr. HOUSTON. They went up to Tamaulipas, where it crosses the river, and Chihuahua. The army crossed the river at Guerrero, and took that place in 1842.

Mr. BALDWIN. I believe I am right, then, Mr. President, in saying that they never set hostile foot within the limits of the ancient province of New Mexico.

Mr. CHASE, (in his seat) Nor of Coahuila.

Mr. BALDWIN. No; nor of Coahuila, which is much lower down the Rio Grande. And yet, for that period of nine years before the annexation, it stood upon the statute books of Texas that they claimed all east of the Rio Grande to its source. I deny the fact upon which the argument of the Senator from Texas was based, that the Government of the United States ever assumed, during the progress of the war with Mexico, the duty of maintaining the title of Texas by force to the Upper Rio Grande, or that they ever admitted that Texas had any title there whatever. What, then, Mr. President, is this attempt on the part of Texas? And how does it look in the face of the civilized world? Texas, a member of the Republic of Mexico, revolted from the tyranny of Santa Anna for the purpose of recovering for her own people the privilege of self-government. In her struggles throughout the contest, she shared largely in the sympathies of the friends of freedom. Originally the inhabitants of Texas proclaimed to the world that they were engaged in a contest of arms to establish their rights as freemen to the privileges secured to them by the Mexican constitution of 1824. Texas maintained that position. She became a free republic. And what was her first act, after establishing her own freedom? To assert upon her statute-book that she had a right to govern, not only the people within her own territory, but to hold the people of New Mexico, a province containing at that time, I believe, a larger population than Texas herself, in subjection to her. She asserted a right, though she never exercised it, to extend her laws to New Mexico, to legislate for that people without their consent, and without inviting their participation, or giving them the privilege of representation in her legis-

lature. And now that New Mexico has been ceded to the United States as the result of the war with Mexico, Texas is here setting up the claim that she has a right to hold these people of New Mexico in subjection, against their assent. Is this the principle for which my friend from Texas fought so valiantly upon the field of battle which signalized the struggle in which his people were engaged? Was it in order that they might conquer, and subdue, and govern as dependent vassals the free people of a neighboring province? Was this the triumph achieved at San Jacinto, which established the independence of Texas? If it was, sir, it was a triumph over the great principle of liberty, first established and promulgated to the world in a practical form by our own Declaration of Independence—a Declaration founded upon and vindicating "the transcendent truth of the inalienable sovereignty of the people," and which abrogated at once all pretensions to dominion, asserted on no higher principles than those which prevailed in the dark ages, justifying the subjection of people by conquest to the government of another people, without their consent. Sir, such a struggle as this would have been unworthy of Texas and of the cause in which she was professedly engaged.

But, sir, for what object has Texas asserted her right over New Mexico? Is it in order that she may govern the people of New Mexico better than they can govern themselves? Is it that she can give them better protection, in regard to all their civil rights, than they can obtain under a territorial government to which they have been accustomed, or as a separate State, under a government administered by themselves? No, sir, this is not the purpose of Texas. What, then, is it? Why, she wants an acknowledgment of her title to the sovereignty of New Mexico, in order that she may transfer it to the United States for a pecuniary consideration. The government of the United States, then, has waged a war with Mexico, conquered the province of New Mexico, promised liberty to its people, purchased from Mexico out of a common treasury a cession of that territory, and now it is to be delivered up to Texas, in order that Texas may sell it again to the United States to pay the debts of Texas which accrued during her own revolution. That, sir, is the character of the claim; that is what the Congress of the United States—that is what the Senate of the United States—in the middle of the nineteenth century, are called upon to sanction; that is the purpose for which it is now proposed to you to send out your commissioners to agree with Texas as to the terms and conditions upon which she is to cede to the United States her claims to New Mexico. Sir, I trust no such purpose as this will be sanctioned by the Senate.

But, Mr. President, it has been said that there are precedents for the proposition submitted by the Senator from Maine. It is said that the same thing was done in reference to the Mississippi territory claimed by the State of Georgia and by the United States as the fruits of the revolutionary contest. Sir, that case is entirely unlike the present. The State of Georgia, after the termination of the revolutionary war, claimed territory lying beyond the recognized limits of that State. Other States which held western territory under a similar or perhaps a superior title, had ceded them to the United States for the common benefit. Georgia was disposing of these lands for her own benefit; and the question arose in regard to the title, and

an act was passed authorizing the President of the United States to appoint commissioners with power to adjust and determine, with such commissioners as might be appointed under legislative authority of the State of Georgia, all interfering claims of the United States and that State to territory situated west of the river Chattahoochee, &c., and also to receive proposals for the relinquishment or cession of the whole or any part of the other territory claimed by the State of Georgia, and out of the ordinary jurisdiction thereof. Under that act commissioners were appointed by the President of the United States, and they agreed with the State of Georgia to relinquish to the United States, for the common benefit, all her claim to the western lands beyond certain specified limits; and the United States agreed, in consideration of the expenditures which Georgia had made upon that territory, to pay to Georgia, out of the first proceeds of the sales of the lands, the sum of \$1,250,000. They also agreed to remove, at the expense of the United States, as soon as it could be reasonably and peaceably effected, the Indian tribes from the lands reserved by Georgia. But the United States did not proceed upon the idea that they were purchasing of Georgia lands which Georgia owned. They repelled her claim of title. They claimed the land as the fruit of the conquest of the common arms of the country. Their object was merely to remove an incumbrance from the title to territory claimed by the United States—not to purchase it under circumstances that would recognize the title of Georgia. The commissioners were not clothed with the power of establishing conventional lines at their pleasure. The United States claimed the whole. Georgia had made—

Mr. DAWSON. With the permission of the honorable Senator, I would like to make an observation. He has read correctly the first article of the agreement. But the condition under that article was, that so much should be paid to extinguish the title to the land then in occupancy, which gives something like \$1,250,000.

Mr. BALDWIN. They were relinquished precisely in the same way that the western lands were relinquished by the States of Connecticut, New York, Virginia, and the other States, the title to them being secured as the fruits of a common war. But Georgia, having incurred expenses upon this territory, was paid \$1,250,000, not in consideration of the land, but in consideration of an equitable claim which she had for expenditures on the territory. I suppose, too, that the stipulation in regard to the extinguishment of the Indian titles was grounded on some similar equitable claim, though I am not conversant with the particulars.

Mr. BERRIEN was understood to state that the consideration which was paid by the United States to Georgia was not inconsistent with the claim which Georgia set up, being accompanied by a stipulation to extinguish the Indian title to the lands lying in the territories reserved by her.

Mr. BALDWIN. My purpose in referring to the articles of agreement with Georgia, was to show that the United States did not intend by that transaction to recognize the title of Georgia to the territory to which she relinquished her claim. Now, Mr. President, if it is the purpose of this

bill, or of the amendment of the Senator from Maine, to authorize a purchase of territory from Texas, I will be glad if the gentleman will do me the favor to point out to me any power under the Constitution to justify it. I should be glad if the gentleman from Georgia would point out any power under the Constitution to purchase territory from a State, which we recognize as belonging to that State, for the purpose either of forming a territorial government, or of converting that territory into another State.

Mr. BERRIEN. It is not necessary, I might say to the Senator, to find any primary power existing under the Constitution to purchase land, which is without controversy admitted to be the property of a State; it is not necessary to find any such power. No such power is to be exercised by this bill. There are conflicting claims on the part of the United States and of Texas in this case, as there were in the case of Georgia and the United States.

Mr. BALDWIN. Allow me, then, to inquire how, by obtaining a cession of her claim to this territory in dispute from Texas, we can be deemed to recognize thereby the title of Texas, so as to make it subject, when ceded, to the laws of Texas?

Mr. BERRIEN. I can answer the gentleman without any hesitation. The admission of conflicting claims, which requires a cession, is involved in the act of receiving the cession. That was the consequence of the cession by Georgia. The United States admitted that Georgia had a claim which it was desirable to acquire to quiet her own title. It was acquired for the purpose of quieting her own.

Mr. BALDWIN. I can easily understand how it can be claimed that the Government of the United States may remove an incumbrance upon a title which they claim to own themselves; but I cannot understand how they acquire the power, except for purposes specified by the Constitution, to make a purchase of territory which they admit, by the very terms of the purchase, to belong to one of the States of the Union, whose title they intend thereby to recognize and obtain.

But, sir, whether the United States have any power or not, it is inexpedient, it is unwise to exercise, or attempt to exercise, any such power. If Texas owns this territory—if she has a legal right to the dominion—why should we interfere? Let her exercise it. If it belongs to the United States, let us confer upon the people of New Mexico the rights we have stipulated to confer by the treaty, that they may enjoy them unmolested by the pretensions of Texas. I have endeavored to show that it belongs to the United States—that Texas has not a shadow of claim to it. Entertaining this opinion, why should I vote to send out commissioners to Texas to come to an agreement with her on some conventional boundary line? No, sir; there is, in my judgment, but one proper forum for the decision of this question, and that is the supreme tribunal of the land. But if we are going to send commissioners to Texas to decide it, their powers should, in my opinion, be limited to the ascertainment and establishment of the true line of boundary, excluding from the domain of Texas any portion of the territory over which Texas did not exercise jurisdiction at the time of her annexation to the Union.





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